



CITY COUNCIL AGENDA REPORT

MEETING DATE: JANUARY 5, 2010

ITEM NUMBER:

SUBJECT: CODE AMENDMENT CO-09-07 AMENDING TITLE 13 OF THE COSTA MESA MUNICIPAL CODE RELATED TO ALCOHOLIC BEVERAGE SALES

DATE: DECEMBER 17, 2009

FROM: PLANNING DIVISION/DEVELOPMENT SERVICES DEPARTMENT

PRESENTATION BY: MINOO ASHABI, SENIOR PLANNER
KIMBERLY BRANDT, AICP, ACTING DIRECTOR

FOR FURTHER INFORMATION CONTACT: MINOO ASHABI, SENIOR PLANNER
(714) 754-5610

RECOMMENDATION

Pursuant to Planning Commission's recommendation, give first reading to an Ordinance amending Title 13 (Zoning Code). The code amendment will establish new regulations related to the off-sale of alcoholic beverages in conjunction with liquor stores, convenience stores, and mini-markets.

BACKGROUND

On July 14, 2009, at a joint study session, the City Council directed staff to prepare a code amendment establishing new standards for operation of liquor stores and convenience markets with alcoholic beverage sales for off-site consumption.

Zoning Code Section 13-200.71 currently requires a conditional use permit (CUP) for the following:

- New liquor store, convenience store, or mini-market;
- Existing store that has its off-sale ABC license revoked or suspended for 30 days or more;
- Certain changes in the operational characteristics of an existing store (i.e. request new off-sale ABC license, change in type of off-sale ABC license, premise to premise transfer of off-sale ABC license), and;
- Cumulative expansion of 500 square feet or more of gross floor area of a liquor store or mini-market;

However, there are many existing stores that predated these zoning regulations and are legally operating without a CUP. Staff considered the concerns expressed by the Commission and Council and researched other city ordinances in preparation of the proposed ordinance.

On October 12, 2009, the Planning Commission on a 4-0 vote recommended approval of the proposed code amendment with the exception of the prohibited hours of sales

that was recommended to be applied on citywide basis and as a separate code amendment.

The October 12, 2009 Planning Commission staff report can be accessed on line at:
<http://www.ci.costa-mesa.ca.us/council/planning/2009-10-12/101209CO0907.pdf>

On November 3, 2009, the City Council continued this item to a Study Session held on November 10, 2009. At the Study Session, Council directed staff to do the following:

- Provide more information related to the proposed code amendment by the Planning Commission to prohibit sales of alcoholic beverages between 2:00 a.m. and 9:00 a.m.; and,
- Refine conditions related to size of alcoholic beverages to prohibit sale of single can/bottle with high alcoholic concentration without restricting sale of high quality expensive products.

ANALYSIS

The following summarizes how the proposed ordinance addresses concerns/issues raised by the Commission and Council at the July and December study sessions:

- Establish more restrictive criteria for requiring a conditional use permit for existing establishments. Originally, staff proposed a more restrictive criterion for requiring a conditional use permit with **any type** of transfer of an existing off-sale ABC license (i.e. person-to-person, premise-to-premise, etc.). However, the City Attorney advised that the existing code remain unchanged with respect to requiring a conditional use permit only in cases when a premise-to-premise transfer of an ABC license is requested. The attached ordinance reflects the latest language as approved by City Attorney to retain the reference to premise-to-premise transfers. However, the recommended amendments to the other criteria remain unchanged. The following lists the proposed criteria for requiring a new conditional use permit:
 - New off-sale ABC license;
 - Change in type of ABC license;
 - Premise-to-premise transfer of an ABC license;
 - Cumulative expansion of 100 SF; and,
 - Suspension of an ABC license for 5 days in a cumulative five-year period.
- Establish new development and operational standards for off-sale of alcoholic beverages. City Council has previously adopted conditions of approval by resolution as listed in Attachment 3. The proposed ordinance includes a list of new operational standards that may be applied to new conditional use permits such as establishing regulations for alcoholic beverages sold in individual containers and prohibiting sales from drive-through windows and portable refrigerated units. As directed by City Council, standard conditions related to the size of beverages were revised to prohibit individual sales of single can/bottle with high alcoholic concentration without restricting sale of high quality products. The revised and new conditions read as follows:

1. Alcoholic beverage sales from drive through or walk-up service windows shall be prohibited.
 2. Wine, beer and other distilled spirit shall be sold in the factory manufactured packages for retail sales. Factory multiple-packed bottles or cans shall not be unpackaged to be sold individually. This restriction is not intended to prohibit the sale of beverages in a single container packaged by the manufacturer for individual sale.
 3. The business shall be conducted, at all times, in a manner that will allow the quiet enjoyment of the surrounding neighborhood. The business shall institute whatever security measures are necessary to comply with this requirement.
- New hours of sale for Alcoholic Beverages. Staff recommended new hours of sales for alcoholic beverages to prohibit sales between the hours of 2:00 a.m. and 9:00 a.m. as a new condition of approval. However, Planning Commission recommended that this condition be applied as a separate citywide code amendment to all off-sale outlets. Additional information from other cities and existing case law will be gathered by staff. This item will be provided under a separate code amendment for Council's consideration in February//March 2010.
 - Code amendment to address declaration of public nuisances related to off-sale alcoholic beverage establishments. Staff is recommending new provisions that will specify nuisance determination and abatement procedures related to off-sale establishments when a business is not operating according to the conditions of approval or the business is operating in a disorderly manner. Refer to Section 13-200.73 of the attached ordinance.

Other Jurisdictions

The existing zoning regulations relating to ABC licenses for liquor stores, convenience stores, and mini-markets are similar to other cities surveyed by the Planning staff. Most Orange County cities deal with off-sale businesses that predate a CUP requirement in a similar manner, such as triggering the CUP requirements to a change in ABC license type and/or an increase of floor area.

ENVIRONMENTAL DETERMINATION:

The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA guidelines, and the City's environmental procedures, and has been found to be exempt pursuant to Section 15061 (b) (3) (general rule) of the CEQA Guidelines, in that it can be seen with certainty that there is no possibility that the proposed amendment to the Zoning Code will have a significant effect on the environment.

ALTERNATIVES

City Council may consider the following alternatives:

1. Give first reading to the Ordinance as recommended by Planning Commission and modified per Council's direction included in Attachment 1.
2. Give first reading to the Ordinance, with additional modifications.
3. Retain the City's existing zoning provisions and receive and file the report.

LEGAL REVIEW


The City Attorney's office has approved the Ordinance as to form.

CONCLUSION

Code Amendment CO-09-07 will establish new criteria for requiring a CUP related to existing businesses with an off-sale alcoholic beverage license and a new process for declaring a liquor store, convenience store, or mini-market as a public nuisance.



MINOO ASHABI, AIA
Senior Planner



KIMBERLY BRANDT, AICP
Acting Development Svs. Director

- Attachments: 1. Ordinance
2. October 12, 2009 – Planning Commission Meeting Minutes
3. Standard Conditions of Approval
4. Comparison Chart

cc: City Manager
Assistant City Manager
City Attorney
City Clerk
Public Services Director
Chief of Code Enforcement
Staff (4)
File (2)
Lieutenant Manley, P.D.

State Department of Alcoholic Beverage Control
Bryan Rushing
605 W Santa Ana Blvd, Bldg 28, Suite 369
Santa Ana, CA 92701

File: 010510CO0907	Date: 122309	Time: 4:45p.m.
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ORDINANCE NO. 10-xx

AN ORDINANCE OF THE CITY COUNCIL OF COSTA MESA, CALIFORNIA ADOPTING ZONING CODE AMENDMENT CO-09-07 TO AMEND TITLE 13, CHAPTER IX, ARTICLE 16, OF THE COSTA MESA MUNICIPAL CODE REGARDING LIQUOR STORES, CONVENIENCE STORES, AND MINI-MARKETS

THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: TITLE 13. Title 13, Chapter IX, Article 16, Liquor Stores, Convenience Stores, and Mini-Markets, of the Costa Mesa Municipal Code is hereby amended as follows:

- a. Amend Sections 13-200.71 through 13-200.73 as follows:

"Sec. 13-200.71 CONDITIONAL USE PERMIT REQUIRED

A new liquor store, convenience store, or mini-market shall be subject to the approval of a conditional use permit, whether or not the business engages in retail sales of alcoholic beverages through a State of California Department of Alcoholic Beverage Control (ABC) off-sale license. An existing liquor store, convenience store, or mini-market shall also be subject to the approval of a conditional use permit for the following actions:

1. Issuance of a new off-sale ABC license; ~~for a liquor store, convenience store, or mini-market;~~
2. Any change in the type of off-sale ABC license; ~~for a liquor store, convenience store, or mini-market.~~
3. Any type of premise to premise transfer of an existing off-sale ABC license; ~~for a liquor store, convenience market, or mini-market;~~
4. A cumulative expansion of 500 100 square feet or more of the gross floor area; ~~of a liquor store, convenience store, or mini-market or,~~
5. ~~Any liquor store, convenience store, or mini-market that has its off-sale ABC license revoked or suspended.~~ Any suspension or revocation of the off-sale ABC license for 30 5 days or more by the state in a cumulative 5-year period by the state. The licensee of the establishment shall file and have approved a conditional use permit before the off-sale ABC license can be reestablished.

Sec. 13-200.72 DEVELOPMENT AND OPERATIONAL STANDARDS FOR LIQUOR STORES, CONVENIENCE STORES, AND MINI MARKETS

The City Council may adopt Development and Operational Standards for Liquor Stores, Convenience Stores, and Mini-Markets that may be applied on a case-by-case basis as conditions of approval by the review authority. The final review authority may use the following these standards in review of new conditional use permits to impose conditions of approval on the use to ensure compliance with the findings contained in Chapter III, Planning Applications:

2. Alcoholic beverage sales from drive through or walk-up service windows shall be prohibited.
4. Wine, beer and other distilled spirit shall be sold in the factory manufactured packages for retail sales. Factory multiple-packed bottles or cans shall not be unpackaged to be sold individually. This restriction is not intended to prohibit the sale of beverages in a single container packaged by the manufacturer for individual sale.
5. Beer or wine shall not be displayed or sold from an ice tub or any other type of portable refrigerated unit.
6. The business shall be conducted, at all times, in a manner that will allow the quiet enjoyment of the surrounding neighborhood. The business shall institute whatever security measures are necessary to comply with this requirement.

Sec. 13-200.73 MODIFICATION OR REVOCATION

(a) **Public Nuisance.** If it is determined that certain characteristics of the liquor store, convenience market, or mini-market are detrimental to the public health, welfare, and safety and contrary to public interest, City Council may declare the liquor store, convenience store, or mini-market as a public nuisance, as defined by California Civil Code Section 3479 and 3480, and abate said nuisance pursuant to the procedures set forth in Section 13-17 of the Zoning Code.

(b) **Findings.** In addition, the final review authority may modify or revoke a conditional use permit for a liquor store, convenience store, or mini-market based upon the findings in Section 13-29(o), or upon making one or more of the following findings:

1. That the approval was obtained through fraudulent, erroneous, or misleading information;
2. The use is being operated in an illegal or disorderly manner;
3. The terms or conditions of approval of the conditional use permit have been violated.
- ~~3.~~ 4. The use creates an adverse impact on the health, safety, or welfare of surrounding properties and uses; or
- ~~4.~~ 5. The use is operated in violation of ABC rules and regulations."

SECTION 2: ENVIRONMENTAL DETERMINATION. The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA guidelines, and the City's environmental procedures, and has been found to be exempt pursuant to Section 15061 (b) (3) (general rule) of the CEQA Guidelines, in that the City Council hereby finds that it can be seen with certainty that there is no possibility that the passage of this ordinance amending the Zoning Code will have a significant effect on the environment.

SECTION 3: INCONSISTENCIES. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this ordinance, to the extent of such inconsistencies and or further, is hereby repealed or modified to the extent necessary to affect the provisions of this ordinance.

SECTION 4: APPLICABILITY. The provisions of this ordinance shall be applicable to new and existing off-sale license establishments as applicable.

SECTION 5: SEVERABILITY. If any provision or clause of this ordinance or the application thereof to any person or circumstances is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or clauses or applications of this ordinance which can be implemented without the invalid provision, clause or application; and to this end, the provisions of this ordinance are declared to be severable.

SECTION 6: PUBLICATION. This Ordinance shall take effect and be in full force thirty (30) days from and after the passage thereof, and prior to the expiration of fifteen (15) days from its passage shall be published once in the ORANGE COAST DAILY PILOT, a newspaper of general circulation, printed and published in the City of Costa Mesa or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the office of the City Clerk five (5) days prior to the date of adoption of this Ordinance, and within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post in the office of the City Clerk a certified copy of this Ordinance together with the names and member of the City Council voting for and against the same.

PASSED AND ADOPTED this _____ day of _____ 2010.

ALLAN R. MANSOOR
Mayor of the City of Costa Mesa

ATTEST:

APPROVED AS TO FORM:

City Clerk of the City of Costa Mesa

City Attorney

STATE OF CALIFORNIA)

)SS

COUNTY OF ORANGE)

I, JULIE FOLCIK, City Clerk and ex-officio Clerk of the City Council of the City of Costa Mesa, hereby certify that the above foregoing Ordinance No. 10-___ as introduced and considered section by section at a regular meeting of said City Council held on the ____ day of _____, 2010, and thereafter passed and adopted as a whole at the regular meeting of said City Council held on the ____ day of _____, 2010, by the following roll call vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereby set my hand and affixed the Seal of the City of Costa Mesa this ____ day of _____, 2010.

City Clerk
City Council of the City of Costa Mesa

Ayes: Chair James Righeimer, Vice Chair Sam Clark, and
Commissioner Stephen Mensinger
Noes: Commissioner Colin McCarthy
Absent: None.

The Chair stated that next Monday at 6:00 p.m. there will be a special meeting just for this item.

4. **Application No.:** CO-09-07
Site Address: Citywide
Applicant: City of Costa Mesa
Environmental
Determination: Exempt

Description:

An ordinance of the City Council of Costa Mesa, California adopting Zoning Code Amendment CO-09-07 to amend Title 13, Chapter IX, Article 16, of the Costa Mesa Municipal Code regarding liquor stores, convenience stores, and mini-markets.

Senior Planner Minoo Ashabi reviewed the information in the staff report and Deputy City Attorney Tom Duarte, Planning Administrator Claire Flynn, and Ms. Ashabi responded to questions from the Commission regarding off-sale hours, ABC license regulations, a future study session discussion, and a restriction as part of the conditional use permit (CUP) process.

Chris McEvoy, Costa Mesa, commented on ABC license regulations and certain liquor stores that are public nuisances.

Commissioner McCarthy and Ms. Flynn discussed hourly restrictions for the CUP process for liquor stores and changing the language to further restrict off-sales from 6:00 a.m. to 9:00 a.m. and removing line Item No. 7 (Standard 7) of the ordinance. Ms. Flynn replied to the Chair that the Commission could recommend that the City Council provide direction on Item No. 7.

Ms. Flynn explained that Item No. 5 on Page 5 shows a minimum suspension of 30 days, but the amendment would further restrict the strict standard to 5 days.

No one else wished to speak and the Chair closed the public hearing.

MOTION: Recommend that City Council introduce and give first reading to Code Amendment CO-09-07, to Title 13, of the Costa Mesa Municipal Code, related to off-sale of alcoholic beverages, with the removal of Item 7, from Attachment 1, for City Council approval as a separate code amendment.

Moved by Commissioner Colin McCarthy, seconded by Commissioner Stephen Mensinger.

During discussion on the motion, the Chair, the Vice Chair, and Ms. Flynn discussed the wording of the motion, and initiating a code amendment for Item No. 7.

The motion carried by the following roll call vote:

Ayes: Chair James Righeimer, Vice Chair Sam Clark,
Commissioner Colin McCarthy, and Commissioner
Stephen Mensinger

Noes: None.

Absent: None.

5. **Application No.: CO-09-09**
Site Address: Citywide
Applicant: City of Costa Mesa
Environmental
Determination: Exempt

Description:

An ordinance of the City Council of Costa Mesa, California adopting Zoning Code Amendment CO-09-09 to amend Title 13, Chapter III, Planning Applications, of the Costa Mesa Municipal Code, to exclude the density of affordable housing projects from being subject to discretionary review during the Design Review process.

Planning Administrator Claire Flynn reviewed the information in the staff report and responded to a question from the Commission regarding zoning use.

ATTACHMENT 3

LIQUOR STORES, CONVENIENCE STORES AND MINI-MARKETS "DEVELOPMENT AND OPERATIONAL STANDARDS"

The following is a list of conditions that could be applied as conditions of approval where appropriate to any new liquor store, convenience store or mini-market. In the parentheses following each standard is a notation as to which business the standard may be applied to. LS denotes liquor stores; CS denotes convenience stores; MM denotes mini-markets; and All refers to all three types of businesses.

Sale Restrictions

38. Music or other entertainment shall not be audible beyond the area under the control of the licensee.
39. Prior to alcohol sales at this location, the applicant shall purchase and transfer an existing Alcoholic Beverage Control license from a location within the City limits of Costa Mesa. (All)
40. Alcoholic beverage sales shall be limited to only beer and wine. (CS, MM)
41. No wine shall be sold with an alcoholic content of greater than 15% by volume except for "dinner wines" which have been aged 2 years or more and maintained in corked bottles. (CS, MM)
42. Wine shall not be sold in bottles or containers smaller than 750 milliliters. (All)
43. No sale of beer in single cans or bottles (any size) shall be permitted. This restriction is not intended to prohibit the sale of such beverages in kegs or other types of containers, with a volume of 2 or more gallons, which are clearly designed to dispense multiple servings. (All)
44. Beer, malt beverages, wine coolers or pre-mixed distilled spirit cocktails (if allowed by the license) packed in 16-ounce containers or smaller, may not be sold as single containers, but must be sold in manufacturer pre-packaged multi-unit quantities. (All)
45. Beer or wine shall not be displayed or sold from an ice tub or any other type of portable refrigerated unit. (All)

On-site Security

46. Applicant shall post signs inside and outside the premises prohibiting the on-site consumption of alcoholic beverages and loitering. (All)
47. Applicant shall post signs inside and outside the premises in compliance with the City of Costa Mesa Municipal Code notifying the public with regard to the prohibition of open containers of alcohol beverages. (All)
At least every 2 hours, from 4:00 p.m. to closing, the

48. applicant shall patrol the area over which the applicant has control in an effort to prevent the loitering of persons about the premises. The frequency of patrols shall be increased should the need arise. The applicant shall make reasonable efforts to prevent loitering during other hours the business is open. (All)
49. Applicant shall secure the premises with appropriate security lighting and employee scrutiny of adjacent areas under which applicant has control, to prevent trash, graffiti and littering. Any lighting under the control of applicant shall be directed in such a manner so as not to unreasonably interfere with the quiet enjoyment of nearby residences. Applicant shall further provide adequate lighting above the entrance to the premises sufficient in intensity to make visible the identity and actions of all persons entering and leaving the premises. (All)
50. Exterior public telephones shall be equipped to prohibit incoming calls. (All)
51. Except as permitted by the City of Costa Mesa Municipal Code for temporary window signs, windows shall not be blocked or obscured. (All)

On-site Maintenance

52. The applicant shall maintain free of litter all areas of the premises under which applicant has control. (All)
53. Any graffiti painted or marked upon the premises shall be removed or painted over within 48 hours of being applied. (All)

Signage and Advertising

54. Exterior advertising shall comply with the City's sign regulations, and exterior advertisements shall be prohibited which indicate the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs which are clearly visible from the exterior at the closest public street or sidewalk, shall constitute a violation of this condition. (CS, MM)
55. Exterior advertising, including temporary window signage, shall comply with all the City's sign regulations. Exterior signage indicating the availability of alcoholic beverages is limited to the name of the business, e.g., South Coast Liquor Store. Additional exterior advertisements promoting or indicating the availability of alcoholic beverages are prohibited. Interior displays of alcoholic beverages or signs which are clearly visible from the exterior at the closest public street or sidewalk, shall constitute a violation of this condition. (LS)

ATTACHMENT 4

COMPARISON CHART

Thresholds for CUP Requirement	
Existing Code	Proposed Amendment
<u>New</u> off-sale ABC licenses for a liquor store, convenience store or mini-market	<u>New</u> off-sale businesses inclusive of all alcoholic beverage establishments
<u>Change</u> in ABC license type for a liquor store, convenience store, or mini-market	No Change
<u>Transfer</u> of license <u>premise to premise</u>	No change
<u>500</u> SF expansion of gross floor area	<u>100</u> SF expansion of gross floor area
Suspension or revocation of license by ABC for <u>30</u> days	Suspension or revocation of license by ABC for <u>5</u> days